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ORIGINAL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANILLE D. CLINE, Petitioner, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, Respondents.	No. CV-S-03-1354-RCJ-PAL UNITED STATES' MOTION TO ALTER OR AMEND THE JUDGMENT PURSUANT TO FED.R.CIV.P. 59(e)

The United States of America, by its counsel, moves to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). For the reasons set forth in the United States' Memorandum in Support of Motion to Alter or Amend the Judgment, as well as the pleadings and papers already on file in this action, the Second Amended Petition to Quash Summonses should be dismissed as moot and the Order, entered April 1, 2004, quashing the summonses in

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question should be vacated.

DATED this 14th day of April, 2004.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANILLE D. CLINE, Petitioner, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, Respondents.	No. CV-S-03-1354-RCJ-PAL UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND THE JUDGMENT

The United States of America, by its counsel, moves to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e).

BACKGROUND

On October 30, 2003, the petitioner filed a Petition to Quash Summons [*sic*] (hereinafter the Petition") with the United States District Court for the District of Nevada seeking to quash the summonses issued to Fidelity, GreenPoint and Chase. For various reasons, the petitioner sought an order quashing the summonses and prohibiting the Service from examining any information obtained from the summonses. Thereafter, on November 17, 2003, before the United States served a responsive pleading, the petitioner filed the First Amended Petition to

Quash Summonses (hereinafter the "Amended Petition"). Subsequently, on December 1, 2003, the petitioner filed a Motion to Obtain Leave of Court to File Second Amended Petition to Quash Summonses (hereinafter the "Second Petition"). The Second Petition, which repeats the assertions of the Amended Petition, attaches a *Bivens* complaint and incorporates the allegations of the *Bivens* complaint therein.

On December 18, 2003, the United States moved to dismiss the Amended Petition and noted that the petitioner's motion to file a second amended petition should be denied because such amendment would be futile. By Order, dated January 27, 2004, the Court, however, granted the petitioner's motion to file the Second Petition. Accordingly, on February 5, 2004, the United States then moved to dismiss the Second Petition.

Oral argument was held on the motion to dismiss on February 23, 2004. The Court quashed the summonses and directed the petitioner to prepare an order for the Court's signature. The Internal Revenue Service thereafter withdrew the summonses. Although Fidelity National Title Agency of Nevada and, later, Greenpoint Mortgage Funding, Inc. complied with the summonses issued to them, the documents produced in response to those summonses, which were sealed upon receipt of the Petition pending the resolution of the instant proceeding, were destroyed or returned to them. To date, Chase Manhattan Mortgage Corp. has not complied with the summons issued to it. By letter, dated March 25, 2004, the Internal Revenue Service notified Chase Manhattan Mortgage Corp. that such summons has been withdrawn. Inasmuch as the summonses challenged by the petitioner are no longer outstanding, on April 1, 2004, the United States moved to dismissed the Second Petition as moot. On the same date, the Court entered an Order quashing the summonses. The United States now moves the Court, pursuant to Federal Rule of Civil Procedure 59(e), to alter or amend the Order, entered April 1, 2004.

DISCUSSION

A motion under Federal Rule of Civil Procedure 59(e) may be based, among other things, on a need to correct clear legal error. *See, e.g., School Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Carlson v. United States*, 76 A.F.T.R.2d ¶ 95-

5592, at 95-7270 (D. Hawaii 1995). This error may be a mistake of law or fact. 12 JAMES W. MOORE, MOORE'S FEDERAL PRACTICE § 59.30[5][a][iv], at 59-105 9 (3d ed. 1998)(footnote omitted). Here, as discussed in the United States' Memorandum in Support of Motion to Dismiss Second Amended Petition to Quash Summonses as Moot, no case or controversy exists with respect to the above-captioned matter because the summonses at issue have been withdrawn. Accordingly, the Second Petition must be dismissed for lack of jurisdiction, and the Order, entered on April 1, 2004 should be vacated.

CONCLUSION

For the reasons set forth above, the Second Petition should be dismissed, and the Order, entered on April 1, 2004 should be vacated.

DATED this 14th day of April, 2004.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANILLE D. CLINE, Petitioner, v. UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, Respondents.	No. CV-S-03-1354-RCJ-PAL CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the UNITED STATES' MOTION TO ALTER OR AMEND THE JUDGMENT PURSUANT TO FED.R.CIV.P. 59(e) and UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND THE JUDGMENT has been made this 14th day of April, 2004, by depositing a true and correct

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copy thereof in the United States mail, postage prepaid, and addressed to:

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